

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 202006846	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 9:50 PM	Location of Incident: Flatbush Avenue and Pacific Street	Precinct: 78	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 10/13/2020 2:26 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 10/13/2020 2:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Brendel	22957	968289	030 PCT
2. An officer			
3. CPT Joseph Taylor	00000	924542	SRG 3
4. COD Terence Monahan	00000	876747	CD OFF
5. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.COD Terence Monahan	Force: Chief Terence Monahan authorized the use of force against individuals.	
B. Officers	Force: Officers struck individuals with batons.	
C. An officer	Force: An officer struck § 87(2)(b) with a baton.	
D.POM Andrew Brendel	Force: Police Officer Andrew Brendel used physical force against an individual.	
E.POM Andrew Brendel	Untruthful Stmt.: Police Officer Andrew Brendel provided a false official statement to the CCRB.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On October 13, 2020, § 87(2)(b) filed this complaint via the CCRB's website on behalf of himself and unidentified individuals.

On May 29, 2020, at approximately 9:50 p.m., § 87(2)(b) was at Flatbush Avenue and Pacific Street in Brooklyn, near the Barclays Center, attending a Black Lives Matter protest. § 87(2)(b) stood on the sidewalk amongst a group of about 50 protesters. Unidentified protesters threw bottles, food, and other objects at officers, which resulted in their arrests. Chief Terence Monahan, of the Office of the Chief of Department, authorized the use of force against individuals, which resulted in unidentified officers pushing unidentified protesters with their batons (**Allegation A: Force:** § 87(2)(g) ) (**Allegation B: Force:** § 87(2)(g) ). An officer pushed § 87(2)(b) in his back with a baton (**Allegation C: Force:** § 87(2)(g) ). PO Andrew Brendel, of the 30<sup>th</sup> Precinct, pushed § 87(2)(b) (**Allegation D: Force:** § 87(2)(b) ). The investigation determined that PO Brendel made a false official statement to the CCRB (**Allegation E: False Official Statement,** § 87(2)(g) ). § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was arrested and charged with § 87(2)(b), § 87(2)(a) CPL 160.50. As of March 24, 2021, the Office of Court Administration (OCA) has no record of the disposition of his arrest (**Board Review 14**).

Body worn camera (“BWC”) video was received from the NYPD. The footage is attached to IAs #21-22 and IA#42-46 (**Board Review 15-21**) and is summarized in IA#25 (**Board Review 22**).

### Allegation (B) Force: Officers struck individuals with batons.

### Allegation (C) Force: An officer struck § 87(2)(b) with a baton.

### Known facts and general descriptions

§ 87(2)(b) testified that he arrived at the protest by himself and was standing on the sidewalk amongst the protesters for about half an hour. During this time, some protesters threw plastic bottles and food at officers. § 87(2)(b) denied that he threw any objects at officers or said anything to any of the officers. Suddenly, a group of 10-20 officers started to yell, “Move back” (**Board Review 01**). Some protesters argued with the officers and shouted at them that they had the right to be there and protest. § 87(2)(b) said these were uniformed officers who were wearing helmets, but he could not provide any additional descriptions for them. The officers held their batons in front of them and pushed protesters who were on the sidewalk in front of § 87(2)(b), § 87(2)(b) and other protesters started moving away from the officers. However, due to the size of the crowd, there were protesters behind § 87(2)(b) blocking § 87(2)(b) from continuing onward. An officer, only described by § 87(2)(b) as a man dressed in a dark colored uniform, pushed § 87(2)(b) in the back with a hard object which § 87(2)(b) believed was a baton. A protester who was standing on the sidewalk beside § 87(2)(b) who § 87(2)(b) could only describe as a white woman, lost her balance and fell down. § 87(2)(b) helped her up while remaining on the sidewalk. An officer, identified by the investigation as Captain Joseph Taylor of SRG, grabbed § 87(2)(b) by the arm, escorted him toward the street, and ordered Police Officer Andrew Brendel of the 30<sup>th</sup> Precinct to place him under arrest. § 87(2)(b) did not know if any of the other protesters who had been pushed were arrested.

### BWC

A request to the NYPD Legal Bureau containing the date, time, and location of the incident, as well as information related to § 87(2)(b)'s arrest, returned two videos from PO Brendel, § 87(2)(b)'s arresting officer. The search criteria listed by the NYPD included the time, date, location, 78<sup>th</sup>

Precinct, 30<sup>th</sup> Precinct (PO Brendel's command), SRG, and Emergency Service Unit ("ESU"). A second request was submitted which listed Captain Taylor, as well as the officers from his command based on the SRG roll call. This request returned five videos. Three of the videos capture officers involved in an unrelate incident at a location several blocks away from Flatbush Avenue and Pacific Street. Two of the videos were duplicates of PO Brendel's BWC videos, which were received in the first request. No videos were received for Captain Taylor.

PO Brendel's BWC video shows that he was posted in the street on Flatbush Avenue near Pacific Street (**Board Review 15**), and it depicts a group of protesters standing on the sidewalk in front of PO Brendel. At the 18:00 minute mark on the media player timestamp (visible at the bottom of the screen), a crowd of protesters are visible standing near the corner at Flatbush Avenue and Pacific Street, down the street from where PO Brendel is standing. At 18:13, a water bottle hits an officer standing next to PO Brendel. Starting at 21:15, a group of protesters who had been standing in front of PO Brendel on the sidewalk, suddenly run to the right, away from Flatbush Avenue and Pacific Street. From the left side of the video, other protesters emerge and run in the same direction. At 21:43, § 87(2)(b) enters the video from the left side of the frame alongside other protesters. An officer wearing a riot helmet appears to push § 87(2)(b) in the back; the video is unclear as to whether the officer is holding a baton. The numbers on the officer's helmet cannot be read in the video. The protesters continue walking to the right, followed by officers moving in the same direction. At § 87(2)(b), Captain Taylor (wearing a uniform with a white shirt) and an unidentified officer walk with § 87(2)(b) toward PO Brendel, who has not moved from his position in the street. Captain Taylor instructs PO Brendel that § 87(2)(b) is being charged with § 87(2)(g).

Captain Taylor testified that he did not activate his BWC because events unfolded quickly (see Allegation F) (**Board Review 09**).

#### **NYPD Documents Reviewed**

A request to the IAB-CCRB Liaison's Unit returned no Threat, Resistance, and Injury (TRI) Report related to § 87(2)(b) (**Board Review 02**).

The 78<sup>th</sup> Precinct Arrest Index for May 29, 2020 was accessed via the NYPD's Booking and Arraignment Disposition System (BADS). The arrest index did not reveal any other arrests which occurred at the same time and location as § 87(2)(b)'s arrest (**Board Review 03**). A "Mass Arrest Report" was received which lists arrests and summonses made in connection with the Black Lives Matter protests which were processed at the Mass Arrest Processing Center in Manhattan (**Board Review 04**). This document did not reveal any arrests made at the same time and location as § 87(2)(b)'s arrest. Most of the entries on this document, which note arrests and summonses in the vicinity of the Barclays Center, note the arrest location as "Barclays Center" without any additional information about the specific location of the arrest.

A request to Patrol Borough Brooklyn South (which encompasses the 78<sup>th</sup> Precinct), returned a 23-page Detail Roster listing officers from commands all around the City who were assigned to the protest at the Barclays Center (**Board Review 05**). The roster notes specific locations in front of the Barclays Center and at various adjacent streets, but it does not note which officers were posted at the specific incident location involved in this complaint.

The 78<sup>th</sup> Precinct Event Summary revealed two events for incidents at the location involved in this complaint (**Board Review 06**). The event documents for these two incidents occurred at approximately 8:50 p.m., an hour before § 87(2)(b)'s arrest. The first reported an injured officer and the second reported a § 87(2)(b) civilian § 87(2)(b) (**Board Review 07**).

### **Concurrent Investigations**

No concurrent investigations were pursued related to this complaint.

### **Ranking Officers**

Chief Terence Monahan, the Chief of Patrol, testified that he arrived at the Barclays Center at about 4:00 p.m., where about 500-1000 protesters had gathered (**Board Review 08**). At about 6:00 p.m. or 6:30 p.m., Chief Monahan deemed the assembly to be unlawful because the protesters had become violent. Protesters had thrown bottles containing unknown liquids, bolts and screws, and other objects at officers. They also set fires and set off fireworks. A recorded dispersal message and verbal commands to disperse were repeated to protesters beginning at 6:30 p.m. Anyone who remained after these warnings were given was subject to arrest for unlawful assembly because the gathering had become a danger to the safety of the public and officers. Chief Monahan issued instructions to SRG, he did not remember specifically to whom, to clear the pavilion in front of the Barclays Center and the adjacent streets.

Chief Monahan remained in the vicinity of the Barclays Center until about 11:00 p.m. At about 9:50 p.m., Chief Monahan issued instructions to SRG, he did not remember specifically to whom, to “clear the block” at Flatbush Avenue and Pacific Street. Chief Monahan gave this instruction because protesters were persisting in throwing objects at officers. SRG is trained in disorder control and in the use of various tactics for crowd control, including the use of physical force, as appropriate, and making arrests. He expected SRG to utilize their discretion in determining which of the tactics to use to disperse the crowd. Some protesters refused to move and pushed officers after being told to leave, which resulted in several arrests. Most protesters complied and left the area. Chief Monahan did not recall if any officers pushed any protesters with batons. He denied using force against any protesters himself and denied giving any additional instructions to any officers specifically regarding the use of force, including batons, against protesters. He did not know which officers were posted at the location at the time of this incident and could not identify any of the officers visible in PO Brendel’s BWC video.

Captain Joseph Taylor of SRG testified that he was at the intersection of Flatbush Avenue and Pacific Street due to the presence of a large crowd. Captain Taylor did not remember what the crowd was doing or if protesters in the crowd were throwing objects at officers. Protesters in the crowd were standing in the street on Pacific Street and on the sidewalk. A commotion broke out amongst protesters in the crowd, though Captain Taylor did not remember specifically what transpired. Unidentified officers began ordering the crowd to disperse. Captain Taylor did not remember if he issued any instructions to officers, or if an order to disperse the crowd came from someone else. Captain Taylor denied pushing anyone with a baton and clarified that he was not equipped with one. Captain Taylor did not remember if he pushed any protesters.

Captain Taylor said Chief Monahan was on scene at the Barclays Center, but he did not remember seeing or receiving instructions from Chief Monahan during this incident. Captain Taylor did not know which officers were at the location alongside him and could not identify any of the officers captured in PO Brendel’s BWC video. Most if not all of the officers working under Captain Taylor were no longer present at the time of this incident because they had made arrests earlier in the evening. The officers at the location were a mix of unidentified SRG and patrol officers.

### **Officers Interviewed**

PO Brendel of the 30<sup>th</sup> Precinct, § 87(2)(b) s arresting officer, testified that he was posted in the street during a protest detail (**Board Review 10**). PO Brendel did not remember what circumstances, if

any, caused officers to be posted at Flatbush Avenue and Pacific Street. PO Brendel received instructions from a supervisor, he did not remember who, to ensure that protesters remained on the sidewalk and did not go into the street. When PO Brendel and the officers posted near him encountered protesters in the street, verbal commands were given to them to move onto the sidewalk. The protesters were compliant and moved onto the sidewalk. PO Brendel did not receive any directions regarding the use of force or batons against protesters. While standing at his post, a crowd of protesters started moving from one side of the block to the other on the sidewalk in front of him. PO Brendel did not know what caused the crowd to move. When the protesters started moving, PO Brendel stepped toward the curb to ensure protesters did not enter the street. PO Brendel denied pushing any protester with his baton and denied seeing any officer do so. A supervisor who PO Brendel did not know, identified by the investigation as Captain Taylor, approached PO Brendel with § 87(2)(b) and instructed him to place § 87(2)(b) under arrest for unlawful assembly. The first time PO Brendel saw § 87(2)(b) was when Captain Taylor walked over with him. PO Brendel did not see anything § 87(2)(b) did before this point in time. PO Brendel did not know which officers were posted in the area with him because they were not from his command.

#### **Allegation Recitation and Disposition**

The available BWC video did not assist in identifying the subject officers of these allegations. The received NYPD documents did not aid in identifying any other victims of this case. Similarly, no records were identified which documented any use of force against § 87(2)(b). The Detail Roster did not reveal which officers were posted at the incident location, and the identified officers who were interviewed denied participating in or witnessing any of the allegations and they did not know which other officers were posted at the location. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

#### **Allegation (D) Force: Police Officer Andrew Brendel used physical force against**

§ 87(2)(b)

Approximately 90 seconds before § 87(2)(b) and the crowd of protesters are captured in PO Brendel's BWC footage coming from off screen on the left and walking to the right of the screen (as described above), PO Brendel was positioned in the same spot. In PO Brendel's BWC video, at the 20:00 minute mark of the media player timestamp (visible at the bottom of the screen), PO Brendel is seen standing in the street while protesters stand on the sidewalk in front of him (**Board Review 15**). At 20:20, a man § 87(2)(b) on it appears to be recording the officer next to PO Brendel with his cell phone and says something inaudible. The man takes a step forward while still recording and a protester behind him pulls him back onto the sidewalk and tells him to step back. At 20:50, the man points his arm to the left of the screen and says something inaudible to an officer to the left of PO Brendel. At 21:15, the protesters next to and behind the man start running to the right. The man turns his head to the left to see what is happening, and then takes a few steps forward into the street. At 21:17, PO Brendel, who is holding his baton in his hand, steps forward and pushes the man, who was originally facing PO Brendel, with his forearm on the man's right shoulder. The man's body turns to the left and he disappears from view for a few seconds. No verbal commands are given to the man before this occurs. At 21:28, the man appears on camera again. He puts his hand up, says he is press, and tells PO Brendel that he is going to kneel down. The man appears to record the crowd that contains § 87(2)(b) and is described above with his cell phone until an unidentified officer tells him to get up and move, which he does.

As discussed above, PO Brendel testified that he was posted at the location and received instructions from an unknown supervisor to keep protesters out of the street. PO Brendel and other officers gave verbal commands to protesters to remain on the sidewalk. When the crowd began

running across the sidewalk in front of him, PO Brendel stepped toward the sidewalk and put his hands and baton up in front of him to prevent protesters from entering the street. After reviewing his BWC video during his CCRB interview, PO Brendel did not remember making physical contact with the man § 87(2)(b) but denied pushing the man. PO Brendel did not remember the actions of the man § 87(2)(b) after the crowd started running on the sidewalk, but believed the man may have run into him after PO Brendel put his hands up.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (**Board Review 26**).

The video evidence shows that the man § 87(2)(b) was speaking to other protesters and recording officers. Immediately after he heard a sudden commotion and saw a large crowd of protesters and officers nearing his location, the man took a few steps forward into the street, which the investigation deemed consistent with an attempt to get out of the way of the fast-approaching crowd. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Untruthful Statement: Police Officer Andrew Brendel provided a false official statement to the CCRB.**

As noted in the previous section, after reviewing his BWC video during his CCRB interview, PO Brendel did not remember making physical contact with the man § 87(2)(b) but denied pushing the man. PO Brendel did not remember the actions of the man § 87(2)(b) after the crowd started running on the sidewalk, but believed the man may have run into him after PO Brendel put his hands up.

Officers are prohibited from making false official statements, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances. NYPD Patrol Guide, Procedure 203-08 (**Board Review 27**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (A) Force: Chief Terence Monahan authorized the use of force against individuals.**

As discussed above, Chief Monahan testified he gave an order to officers to “clear the block” because individual protesters from the group had become violent and were throwing objects at officers. Chief Monahan expected the SRG officers to use their discretion in deciding which of the

crowd control tactics they were trained to use, to use to clear the block, and these tactics ranged from making arrests to using force against people who refused to disperse. Chief Monahan witnessed unidentified officers give verbal orders to protesters to disperse. He did not recall seeing any officer push any protester, he did not recall seeing any officer use a baton to push any protestor, and he denied that he took either of these actions himself.

The available BWC footage shows an officer push § 87(2)(b) as described above, but it does not capture the events leading up to the crowd being dispersed because PO Brendel was standing down the block from where the incident started. As discussed above, PO Brendel's BWC video also show that he pushed the man wearing the panda t-shirt. Neither Captain Taylor nor PO Brendel recalled if officers pushed protesters and both denied doing so themselves.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide Procedure 221-01 (Board Review 26).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(4-b), § 87(2)(g)  
[REDACTED]

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 12**).
- Chief Monahan has been a member of the service for 39 years and has been a subject in four prior CCRB complaints involving five allegations, none of which were substantiated.  
§ 87(2)(g)  
As of the date of this report, Chief Monahan is listed as a subject in 11 open CCRB complaints involving incidents related to the Black Lives Matter protests.
- Captain Taylor has been a member of the service for 21 years, has been a subject in one prior CCRB complaint involving two allegations, neither of which was substantiated.  
§ 87(2)(g)
- PO Brendel has been a member of the service for one year and this is the first CCRB complaint to which he has been named as a subject.

#### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 31, 2021, the NYC Office of the Comptroller had no record of a Notice of Claim being filed regarding this incident (**Board Review 24**).
- According to the OCA, as of March 24, 2021, § 87(2)(b) has no history of criminal convictions in New York City (**Board Review 13**).



Squad No.: 13

Investigator:	_____	<u>SI Rolando Vasquez</u>	<u>06/25/21</u>
	Signature	Print Title & Name	Date

Squad Leader:	_____	<u>IM Laura Kastner</u>	<u>06/25/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date